

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
WADE FRIDAY	:	NO. 98-642

ORDER - MEMORANDUM

AND NOW, this 28th day of August, 2000, defendant Wade Friday's motion to withdraw his guilty plea is denied. Fed. R. Crim. P. 32(e).

"If a motion to withdraw a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit the plea to be withdrawn if the defendant shows any fair or just reason." Fed. R. Crim. P. 32(e). In evaluating such a motion, the factors to consider are (1) whether the defendant has asserted his innocence; (2) whether the government will be prejudiced by withdraw of the plea; and (3) the strength of the defendant's reasons to withdraw the plea. See United States v. Huff, 873 F.2d 709, 712 (3d Cir. 1989). Although the right to withdraw the plea is not absolute, withdrawal should be permitted more liberally before sentencing than thereafter. See United States v. Trott, 779 F.2d 912, 915 (3d Cir. 1985).

Defendant's motion states that "he did not adequately understand nor fully appreciate the consequences of his guilty plea including the full guideline ramifications, the restrictive aspects of his guilty plea agreement and the uncertainty inherent in his cooperation guilty plea agreement." Defendant's motion to withdraw at ¶ 8. A defendant must assert his innocence and "give

sufficient reasons to explain why contradictory positions were taken before the district court.” United States v. Harris, 44 F.3d 1206, 1210 (3d Cir. 1995) citing, United States v. Jones, 979 F.2d 317, 318 (3d Cir. 1992).

Here, defendant does not assert his innocence and does not explain away his plea in which he admitted guilt and stated that he understood the guilty plea agreement and had made a counseled and considered decision to plead guilty. Eventually, the government decided not to file a § 5K1.1 motion. At that point, defendant appears to have changed his mind about pleading guilty. That alternative is not available to him, given his knowing and voluntary entry of his guilty plea and the lack of any other sufficient reason. Accordingly, the motion must be denied. Defendant will be directed to appear for sentencing.

Edmund V. Ludwig, J.